

SENATE BILL NO. 452

INTRODUCED BY PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A JUDGE TO ISSUE A STANDING NO CONTACT ORDER AND TO DIRECT LAW ENFORCEMENT TO SERVE THE ORDER ON DEFENDANTS CHARGED WITH PARTNER OR FAMILY MEMBER ASSAULT; PROVIDING FOR ORAL AND WRITTEN NOTIFICATION OF THE ORDER TO THE DEFENDANT; PROVIDING THAT VIOLATION OF A NO CONTACT ORDER IS A MISDEMEANOR; AND AMENDING SECTIONS 46-6-311 AND 46-9-108, MCA."

WHEREAS, the Legislature has reviewed and considered the report filed by the Montana Domestic Violence Fatality Review Commission, which conducted case reviews of domestic violence homicides of spouses, partners, and children; and

WHEREAS, victims of domestic violence are at high risk for additional threats, violence, and homicide; and

WHEREAS, a victim's participation in a prosecution is jeopardized when a domestic violence assault is followed by intimidation in the form of threats and coercion; and

WHEREAS, courts have the authority to impose conditions on defendants charged with partner or family member assault when conditions will improve victim safety; and

WHEREAS, a court order restricting contact between the offender and the victim will improve victim safety.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on all defendants charged with a violation of 45-5-206. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with a violation of 45-5-206. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with a violation of 45-5-206 is effective for ~~up to 72~~ 36 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with an assault on a partner or family member. You are not allowed to have contact with _____ (list names). You may not _____. Violation of this no contact order is a criminal offense under [this section], MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts ~~up to 72~~ 36 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of this offense.

(c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(9) As used in this section, the following definitions apply:

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an

1 assault on a partner or family member from contacting a protected person.

2 (b) "Partner" or "family member" has the meaning provided in 45-5-206.

3 (c) "Protected person" means a victim of a partner or family member assault listed in a no contact order.

4
5 **Section 2.** Section 46-6-311, MCA, is amended to read:

6 **"46-6-311. Basis for arrest without warrant -- arrest of predominant aggressor -- no contact order.**

7 (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause
8 to believe that the person is committing an offense or that the person has committed an offense and existing
9 circumstances require immediate arrest.

10 (2) (a) The summoning of a peace officer to a place of residence by a partner or family member
11 constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family
12 member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining
13 order, or other imminent danger to the victim.

14 (b) When a peace officer responds to a partner or family member assault complaint and if it appears
15 that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is
16 the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the
17 predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the
18 predominant aggressor is must be based on but is not limited to the following considerations, regardless of who
19 was the first aggressor:

20 (i) the prior history of violence between the partners or family members, if information about the prior
21 history is available to the officer;

22 (ii) the relative severity of injuries received by each person;

23 (iii) whether an act of or threat of violence was taken in self-defense;

24 (iv) the relative sizes and apparent strength of each person;

25 (v) the apparent fear or lack of fear between the partners or family members; and

26 (vi) statements made by witnesses.

27 (3) If a judge has issued a standing order as provided in [section 1], a peace officer shall give a
28 defendant charged with partner or family member assault both written and verbal notice of the no contact order
29 issued pursuant to [section 1]. The notice must include specific conditions as ordered by the court."

1 **Section 3.** Section 46-9-108, MCA, is amended to read:

2 **"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The

3 court may impose any condition that will reasonably ensure the appearance of the defendant as required or that
4 will ensure the safety of any person or the community, including but not limited to the following conditions:

5 (a) the defendant may not commit an offense during the period of release;

6 (b) the defendant shall remain in the custody of a designated person who agrees to supervise the
7 defendant and report any violation of a release condition to the court, if the designated person is reasonably able
8 to assure the court that the defendant will appear as required and will not pose a danger to the safety of any
9 person or the community;

10 (c) the defendant shall maintain employment or, if unemployed, actively seek employment;

11 (d) the defendant shall abide by specified restrictions on the defendant's personal associations, place
12 of abode, and travel;

13 (e) the defendant shall avoid all contact with:

14 (i) an alleged victim of the crime, including in a case of partner or family member assault the restrictions
15 contained in a no contact order issued under [section 1]; and

16 (ii) any potential witness who may testify concerning the offense;

17 (f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services
18 agency, or other appropriate individual;

19 (g) the defendant shall comply with a specified curfew;

20 (h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

21 (i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other
22 controlled substance without a legal prescription;

23 (j) the defendant shall furnish bail in accordance with 46-9-401; or

24 (k) the defendant shall return to custody for specified hours following release from employment,
25 schooling, or other approved purposes.

26 (2) The court may not impose an unreasonable condition that results in pretrial detention of the
27 defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will
28 ensure the defendant's appearance and provide for protection of any person or the community. At any time, the
29 court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon
30 its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

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